ETHICS COMMITTEE PROCEDURES

The Ethics Committee will consider requests for guidance from Association members who are currently facing a question of interpretation and application of the Rules of Professional Conduct. The Committee will not provide guidance in response to questions about the ethical obligations of attorneys other than the requesting attorney or the requesting attorney’s law firm. The committee will respond to requests through written opinions or advisory letters.

Requests for guidance from the committee must be in writing, and are to be sent to the SBAND office. The SBAND office will forward the request to the committee chair. The chair, after conferring with the SBAND executive director, will determine whether the requested guidance should be provided and, if it should, whether the guidance should be provided by opinion or advisory letter. In making the determination whether to provide the requested guidance, the chair will consider whether the request raises issues of interpretation and application of the Rules of Professional Conduct, whether the committee has issued opinions on the same or similar issues, whether the request relates to future conduct, and whether any existing committee opinions might answer the questions presented in the request. In making the determination whether to provide the requested guidance by opinion or advisory letter, the chair will consider whether the guidance will benefit the Association members generally or is limited to specific facts and circumstances that limits the general benefit of the guidance, and any time constraints impacting when the requesting lawyer needs the guidance for it to be of assistance.

The requesting lawyer should consider issues of breach of confidentiality which may arise in making a request to the committee. The requesting lawyer may wish to obtain client consent for making the request for guidance. The requesting lawyer may present the question as hypothetical if asking it in that manner would preserve client confidentiality and the lawyer cannot obtain consent to disclosure of the actual facts. The chair and the executive director will consider whether the request contains sufficient information to allow the committee to issue a meaningful opinion, and may request additional information from the lawyer requesting the opinion.

The requesting lawyer should consider the committee members’ duty to report conduct which raises a substantial question as to a lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects. The committee members’ duty to report under Rule 8.3 NDRPC includes a duty to report conduct which may come to their attention through their work on the committee. The committee will consider only requests addressing issues of prospective conduct, and will not address issues relating to past conduct. When a reporting issues arises, the Committee may discuss whether there is a duty to report specific conduct. However, each committee member will decide whether he or she has a duty to report that conduct.
The committee will not act as a fact finder. If the outcome of a question presented is dependent on deciding among conflicting facts, the committee will, to the extent possible, issue guidance which addresses the alternative findings of fact. Each opinion or advisory letter will include a statement of facts assumed for purposes of the opinion or advisory letter. The statement of facts will include a complete statement of all facts relevant to the opinion or advisory letter, but need not include facts presented by the requesting lawyer which are not relevant to the opinion.

Opinions will be written without identity of requesting lawyers or of parties involved.

When a request is accepted for consideration, a member of the committee will be assigned to prepare a draft opinion or advisory letter. After the draft opinion or advisory letter is prepared, a copy of the request and of the draft opinion or advisory letter will be sent to all members of the committee. Any committee member who identifies a conflict in considering the request will have no involvement in drafting or considering the opinion or advisory letter. The committee will consider the draft opinion or advisory letter at a meeting, generally held via telephone conference call, and will determine whether to accept the draft as prepared or with amendments.

Opinions will state whether they are adopted unanimously or by majority. If an opinion is not adopted unanimously, the number of members voting for and against adoption may be included in the opinion. Advisory letters will be signed by the committee chair and need not indicate whether it was adopted unanimously.

Each opinion will be summarized in an SBAND publication, and will be indexed according to the rules involved. Advisory letters will be sent to the requesting lawyer but will not be summarized in an SBAND publication or otherwise published. Advisory letters are of no precedential value and only provide protection under North Dakota Rule of Lawyer Discipline 1.2(B) to the requesting lawyer.

Opinions will be available to SBAND members on request.